

Commissioner Daggett asked about Method Two. The city manager replied that it would be designed similar to a septic tank design which allows natural runoff from the site. The City does not become a drainage provider. Commissioner Tosch asked about future DEQ requirements and how soon this will need to be addressed. Neither the City nor DEQ knows at this time. Commissioner Tosch moved and Commissioner Jensen seconded to accept the report for onsite drainage requirements. Motion carried unanimously.

Advisory Review of Potential Variance Request - Shelly/Jackson

Terry Shelly and Dick Jackson, who reside at 16 S.W. Birch Drive, were present to discuss a potential variance request to the side yard setback requirements. In providing background information, City Manager Peterson stated that Ms. Shelly and Mr. Jackson had replaced a shed on the west side of their property with an attached carport which did not meet the 7 foot side yard setback requirements. The structure was noticed by city staff on a routine drive through, resulting in a correction notice to the owners. The structure nearly reaches the property line, and the staff would have to recommend denial if a formal variance hearing were held. Therefore, the property owners were asked to attend this meeting to discuss the issue with the commission before going to the expense of a hearings process.

Mr. Jackson said when they moved into the house there was a storage shed existing on the west side of the property. It was in very poor condition, provided minimal access to the back yard and they tore it down, replacing it with a much better structure, the attached carport. He said they received favorable comments from their neighbors, and signatures to substantiate the comments were presented from residents at 15, 17, 18 and 19 S.W. Birch Drive.

Mr. Jackson had submitted a preliminary application for variance and reviewed it, step by step, with the planning commission. The application stated they are replacing an existing structure and that they deserve the same rights as the previous owner in having a storage structure. Access to the rear of the property is on the west side, the same as the driveway and garage. They felt it was logical that access to the back yard as well as to storage be on the same side.

Mr. Jackson said the variance was necessary in that it gave them the same property right as the previous owner. The former structure consisted of 4 x 4 uprights in concrete, plywood floors and sides and corrugated fiberglass top, and they felt it was unfair that they not be allowed to improve on an unsightly structure. The property owner to the west has a similar situation even though he chose a minimum amount of covered storage. Mr. Jackson contended the new structure adds to the eye appeal of the property and will be finished in the same manner as the residence (shingled roof and painted).

Continuing, Mr. Jackson said the variance would not be detrimental to the purposes of the zoning ordinance, property in the zone or vicinity because the new structure will allow clear access to the back yard, is well built and improves the appearance of the property, is open on sides and is one and one-half feet further away from the property line than the previous structure; it is acceptable to the neighbors and improves the appearance of the neighborhood.

Mr. Jackson felt the request is a minimum variance from the provision because it greatly improves access to the property in that the previous structure allowed only a four foot access to the back yard and the new structure allows 9 feet and is completely open from the front. In conclusion, Mr. Jackson asked the planning commission to agree that a variance is a possibility.

Ms. Shelly said the attached carport is in the side yard, one and one-half feet from the property line. It is 9 and 1/2 feet wide and 34 feet long, running the length of the house. The structure is unfinished, and Commissioner Jensen asked if its present size is the size it will be when completed and was advised it is and will be left open. Commissioner Wamsley asked how old the previous structure was. It was thought to be about ten years old and was approximately 7 by 25 feet in size.

Commissioner Saylor asked if it could be looked at as a nonconforming use, and a discussion on definitions ensued. City Manager Peterson explained what constitutes a nonconforming use, which is a use that was legally permitted in the past but not under current codes. The previous structure was not permitted, and nonconforming provisions do not apply. Mr. Jackson said the new structure greatly enhances visibility to the back yard. He thought he should have an owner's right when replacing something that was an eyesore.

Chairman Carper said the commission was trying to find some way the use could fit into the ordinance, but once such a decision was made, the commission would have to live with it. There must be a basis to make a decision, and so far one had not been found. He advised the planning commission had been cautious in allowing variances in the past and had interpreted the required findings in a little different light than were applied by Mr. Jackson.

City Manager Peterson stated that consideration had been given to an amendment to auxiliary uses to permit a carport to impinge within the side yard setback. The fire and building departments had not supported any reduction in setback requirements for such a use. The chairman realized the owners were trying to upgrade an existing situation and asked for comment on considering some allowance to address such situations on a case by case basis. The city manager said if the commission determined that a pre-existing, nonpermitted use could be considered as a nonconforming use, the owners could proceed.

Commissioner Wamsley said that two wrongs don't make a right. Commissioner Tosch said it was an unfortunate situation for the property owners but saw no way "to ease the pain". He wondered what could be done. City Manager Peterson said the owners did have the right to proceed with the variance process. If nothing were done, the City would be forced to initiate abatement proceedings. Commissioner Daggett regretted not being able to help but that permission would compound and expand upon a nonpermitted use, even though in this particular situation, it was an improvement. The predicament was in trying to be logical and consistent with the ordinance, and he felt a variance could not be granted. It seemed to Mr. Jackson that an amendment might be considered to take each situation on a case by case basis, that it would not be so "iron-fisted". Commissioner Wamsley asked Mr. Jackson what standards he felt would apply, and Mr. Jackson responded on the basis of fire, safety, etc.

Ms. Shelly asked the commission if consideration would be given if they made the structure inflammable, to commercial standards. Commissioner Jensen was sympathetic

but said there must be rules; if they are continually changed to meet each situation, there are no rules. City Manager Peterson expressed concern about the exceptions process if they are hearing driven because it can turn into a neighborhood popularity contest. Ms. Shelly asked when variances are granted, and Chairman Carper said they are not granted routinely.

County Land Use Request

A notice was received from the county planning commission on a request for a conditional use to allow a real estate sales office as a home occupation. The applicant was David White for property located on the north side of E. Elm Avenue approximately 1 1/2 miles east of the city limits. Justification was presented along with findings and conclusions of the county planning department. The planning commission had no adverse comment.

Zoning Ordinance Co-Adopted

The City received confirmation from the county planning department that the county board of commissioners had co-adopted the City's new zoning ordinance, no. 1691.

Planner Assessment Center

The assessment center for planner applicants was conducted all day on Saturday, October 6. There were five applicants who completed the series of exercises, and it was felt the process went smoothly. A leader emerged from the center, and follow-up reference checks are underway. Final announcement will not be made until after the November general election. Comments were made by planning commissioners who were assessors and role players in the center.

Planner Comments

City Manager Peterson reported on pending development issues throughout the city, including Main Street improvements.

There was no further business, and the meeting was adjourned at 9:40 pm.

VARIANCE APPLICATOR
16 SW BIRCH

1. We are replacing an existing structure. Therefore, we don't think it impossible to work with zoning ordinances in erecting and using the structure. We deserve the same rights as the previous owner in having a storage structure.

2. Access to the rear of our property is on the west side. our driveway and garage are on the west side and it's logical that access to the backyard as well as access to storage be on the same side.

Access from the east side is not practical. The curb is not sloped, and there is a large fir tree blocking access. A driveway would have to be built across the lawn, and the sprinkler system would have to be moved. Access here would be an eyesore to the neighbors on the south. A visit to the property will verify that access and storage should occur on the west side of the property.

3. This variance is necessary for preservation of property right for several reasons.

A. It gives the present owner the same property right as the previous owner. The previous structure consisted of 4x4 uprights in concrete, plywood floors and sides and corrugated fiberglass top. It is unfair to the present property owner not to be able to improve on an unsightly structure.

B. The property owner just to the west (across the fence) has a similar situation. While he chooses only a minimum amount of covered storage, never the less, it is a storage area.

C. A new structure adds to the eye appeal of the property. It will be finished in the same manner as the existing home structure. The roof would be shingled and the entire structure painted. Neighbors across the street and to the west (those folks that see the structure) are in favor of the new structure.

4. The authorization of this variance is not detrimental to the purposes of the zoning ordinance or property in the zone or vicinity because:

A. The new structure will allow clear access to the backyard of property at 16 SW Birch,

B. The new structure is well built and improves appearance of the property, it is open on all sides, and 1-1/2 feet further from the property line than the previous structure.

C. The new structure is acceptable to the neighbors, it improves the appearance of the neighborhood.

5. The requested variance is a minimum variance from the provision because it greatly improves access to the property at 16 SW Birch. The previous structure allowed only a four foot access to the backyard. The new structure allows a nine foot access and is completely open from the front.

9, 27/90

The undersigned agree that the replacement structure at 16 SW Birch is a substantial improvement over the previous structure. Furthermore, its an improvement for the neighborhood.

Alma V. Noble	15	S.W.	Birch Drive
Carl David Smith	17	S.W.	Birch Dr
John H. King	18	SW	Birch Dr.
Mary Jane Holt	19	SW.	Birch Dr.
Lu W. Holt	19	SW	BIRCH DR.

APPLICATION FOR VARIANCE

Pursuant to the provisions of Sections ¹⁰⁴⁻¹⁰⁶ ~~104-104~~ of Hermiston Zoning Ordinance No. ¹⁶⁹¹ ~~1504~~, application is hereby made for a variance for the following described property:

Name of Applicant Dick S Jackson Phone 567 3399

Mailing Address 16 SW Birch

Name of Owner Terri Shelly Phone 567 3399

Mailing Address 16 SW Birch

Property Description: Map No. _____ Tax Lot _____

Addition _____ Block _____ Lot _____

For metes and bounds description, please attach legal description.

Street Address 16 SW Birch

Current Zoning District _____

IMPORTANT!: Oregon's Land Use Planning Laws and Section 111 of Ordinance No. 1504 require the planning commission to make "findings of fact" with regard to variance requests. The findings provide justification to either approve or deny the application. Read the questions that follow and answer them as completely as you can; use additional sheets if necessary. Your responses will be used by the City to make findings and evaluate the merits of your request. The chances of a successful application depend upon the adequacy of the arguments you present to justify approval of the application. If you have any questions or desire assistance in completing this application, the planning staff is available to assist you.

1. Why is it impossible to maintain the zoning ordinance requirements and, at the same time, build, erect or use the structure? Explain: _____

2. Do exceptional or extraordinary conditions apply to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, topography or other circumstances over which the applicant has no control? (NOTE: These exceptional circumstances should relate to the land rather than persons.) Explain: _____

3. Why is the variance necessary for the preservation of a property right of the applicant substantially the same as is possessed by owners of other property in the same zone or vicinity? _____

4. Explain why the authorization of the variance would not be materially detrimental to the purposes of the zoning ordinance, be injurious to property in the zone or vicinity in which the property is located, or be otherwise detrimental to the objectives of any development pattern or policy.

5. Explain why the variance requested is the minimum variance from the provisions and standards of the zoning ordinance which will alleviate the hardship.

ADDITIONAL INFORMATION TO BE FURNISHED BY APPLICANT:

- 1. Evidence that applicant is owner or purchaser of the property or has written permission of such owner to make an application for a change in district.
- 2. Two copies of a map drawn to scale, showing the location of the property concerned with all proposed or existing building(s), and the location of all highways, streets and alleys.

The above statements are true to the best of my belief and knowledge. As applicant, I understand that the planning commission requests my attendance, or the attendance of my representative, at the meeting(s) where this request is scheduled for consideration, and may grant or deny this request based upon the testimony provided at the hearing.

Signature of Applicant

Filing Fee: \$100.00 Receipt No. _____ Date: _____, 19__

VERIFICATION: Date: _____, 19__ Signature _____
City of Hermiston

PUBLIC HEARING DATE: _____, 19__

OUT-OF-POCKET EXPENSES FOR MAILING & PUBLICATION COSTS WILL BE BILLED LATER.

NOTE: The Hermiston Planning Commission meets the 2nd Wednesday of the month. Because of public notice requirements, this application must be returned to City Hall no less than two weeks prior to the public hearing date. For further information, contact Hermiston City Hall, 180 N.E. 2nd Street, Hermiston, Oregon 97838, or telephone (503) 567-5521.

city
of
hermiston

180 N.E. 2ND STREET / HERMISTON, OREGON / 97838 / FAX (503) 567-3551

September 24, 1990

Mr. Dick Johnson
16 S.W. Birch Drive
Hermiston, OR 97838

Dear Mr. Johnson:

In accord with our recent telephone conversation, enclosed please find a copy of the City's zoning ordinance and an application for a variance.

Please advise if we can provide additional help.

Sincerely,

William A. Peterson, Jr.
City Manager

/pat
Enclosures 2

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BUILDING DEPARTMENT
CITY OF HERMISTON, OREGON

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Correction Notice

Job Located at #16 Birch (TERRY SHOLLY)

I have this day inspected this structure and these premises and have found the following violations of City and/or State laws governing same:

- ① 16' x 34' CARPORT under construction on west side of existing residential garage appears to be in violation of the City of Hermiston zoning ORD. 5. The 1990 Oregon Structures (Placemaking Code) in the fact that only approximately 24" of setback available in the zoning ORD, requires 7' setback on Res. Singleyarded. A Building Permit & Plan Review is also required for this structure. Ref. ORC Sec. 301A
- ② A Stop Work Order is hereby issued. Effect until the proper Approvals are obtained by variance or other means & a Building Permit obtained. If no variance available then the Planning Commission then the structure shall be removed. Ref. ORC Sec. 201(d)
- ③ An investigation fee shall be charged at the time of Building Permit application. Ref. ORC Sec. 301A

You are hereby notified that no more work shall be done upon these premises until the above violations are corrected. When corrections have been made, call for inspection.

Date

9/17/90

Inspector for Building Dept.

DO NOT REMOVE THIS TAG



TMENT
N, OREGON

Notice

Ferry Shelly
inspects and have found the following

#16 Birch Carport
9/19/90 No Permits.

Construction
Residential
in Violation
Zoning Ord.
City of Beaverton
only approximately
6'6" in the
7' setback on

A Building Permit Review is Also
Required for this structure. Ref. UBC Sec 301A

② A Stop Work Order is hereby
Effect until the proper Approvals
Are obtained by Variance or other
means & A Building Permit obtained.
If no Variance Available then the
Planning Commission then the Structure
shall be removed. Ref. UBC Sec 201(d)

③ An investigation fee shall be
charged at the time of Building Permit
Application Ref. UBC Sec. 301(E)

You are hereby notified that no more work shall be done upon these premises until the above
violations are corrected. When corrections have been made, call for inspection.

Date 9/19/90

[Signature]
Inspector for Building Dept.

DO NOT REMOVE THIS TAG